

INITIAL STATEMENT OF REASONS

Proposed Amendments to California Code of Regulations (CCR) Title 2, Sections 599.500 through 599.501: Health Care Definitions and Coverage

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is intended to Address:

In March 2010, President Obama signed the Patient Protection and Affordable Care Act (Act), and the Health Care and Education Reconciliation Act of 2010 (collectively the “Act”) into federal law, reforming the United States’ health care system. Some provisions in the Act are effective upon passage of the law, while other provisions are phased in over the next 1 to 10 years. Effective for “plan years” beginning on or after September 23, 2010, any group health plan that provides dependent health care coverage for children must continue providing coverage to adult children up to age 26.

On May 10, 2010, the U.S. Department of Health and Human Services (HHS) issued interim final regulations for dependent coverage (see 26 CFR Parts 54 and 602). These regulations clarified that health care plans and insurers that provide dependent coverage for children must:

- Make that coverage available to adult children up to age 26.
- Provide coverage whether or not a child is a tax dependent, a student, resides with or receives financial support from the parent(s), is employed, or is eligible for other coverage.
- Provide coverage without varying benefits or premiums based on the age of the child.
- Provide coverage regardless of a child’s marital status (the Act does not require plans and insurers to extend coverage to a child’s spouse or children).

The California Public Employees’ Retirement System (CalPERS) provides health care to State and contracting agency employees, annuitants, and eligible family members under the Public Employees’ Medical and Hospital Care Act (PEMHCA) in Government Code (GC) section 22750 et seq. Pursuant to State law and regulation, CalPERS currently provides dependent health care coverage to eligible children who are unmarried up to age 23 and disabled children, regardless of age. By virtue of the Act and interim final regulations, these coverage limitations are inconsistent with current federal law. To align State law to the Act, the CalPERS Board of Administration (Board) recommended the Legislature amend GC section 22775 to remove provisions that require that a child be unmarried to be considered eligible for health care coverage as a “family member.” These provisions are included in Senate Bill (SB) 1139 (Correa 2010) which is currently enrolled, but has not yet been sent to the Governor. GC

section 22775 also provides the Board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to children, which is accomplished by the CCR, Title 2, sections 599.500 and 599.501. Pursuant to the Act, CalPERS must begin offering dependent health care coverage to eligible children up to age 26 in the plan year beginning January 1, 2011. The CCR sections 599.500 and 599.501 must be amended to comply with these requirements.

Specific Purpose:

The GC section 22775 currently provides the Board the authority to prescribe conditions and limitations pertaining to children, which it accomplishes by way of section 599.500, subdivision (n), and section 599.501, subdivisions (f) and (g).

The Board proposes to amend and adopt regulations in CCR sections 599.500 and 599.501 to conform State regulations to the Act by extending health care coverage to adult children up to age 26 for all categories of eligible children.

The amendments to CCR sections 599.500 and 599.501 will also clarify these regulations by providing separate definitions for those groups of children who are, and have been, eligible for coverage under PEMHCA and pursuant to section 599.500(n), as well as clarify eligibility requirements for those groups.

1) Section 599.500, subdivisions (a) through (m):

The CCR section 599.500, subdivisions (a) through (m), remain unchanged.

2) Proposed amendments to section 599.500, subdivision (n):

Existing section 599.500, subdivision (n) provides for the coverage of unmarried children, including “economically dependent children” up to age 23, unless the child is incapable of self support because of a physical or mental disability.

This amendment will clarify the eligibility requirements for an adopted, step, or recognized natural child, including the extension of health care coverage “until attainment of age 26.” CalPERS proposes moving other provisions formerly contained in subdivision (n) to new subdivisions (o) and (p).

3) Proposed amendments to section 599.500, subdivision (o):

Existing section 599.500, subdivision (o), contains language that relates to Medicare terms and definitions. This subdivision is being renumbered as section 599.500, subdivision (q). The language will remain unchanged.

Proposed section 599.500, subdivision (o), further defines the term “child” and separates out provisions for coverage of children for whom employees or annuitants have assumed a parent-child relationship which have been in place since at least the 1970s. The new language in this subdivision clarifies the employee or annuitant must certify on an annual basis that he or she has assumed parental duties or status in lieu of a parent-child relationship as defined in subdivision (n). The amendment removes references to “economically dependent children” formerly contained in subdivision (n) to comply with federal regulations.

4) Proposed amendments to section 599.500, subdivision (p):

Existing section 599.500, subdivision (p), defines “supplemental plans” as they relate to Medicare Parts A and B. This subdivision is being renumbered as section 599.500, subdivision (r). The language will remain unchanged.

Proposed subdivision (p) clarifies that a disabled child’s coverage continues after attainment of age 26 if he or she meets the stated eligibility requirements. It separates out the definition for “disabled child,” formerly included in subdivision (n), and clarifies this is the definition of “disabled child” as used in section 599.501, subdivisions (f) and (g).

5) Section 599.500, subdivisions (q) through (v):

The CCR section 599.500, subdivisions (q) through (v), formerly subdivisions (o) through (t) remain unchanged with the exception of subdivision renumbering.

6) Section 599.501, subdivisions (a) through (e):

The CCR section 599.501, subdivisions (a) through (e), remain unchanged.

7) Proposed amendment to section 599.501, subdivision (f):

Existing CCR section 599.501, subdivision (f), provides coverage for a disabled child after attainment of age 23 when the employee or annuitant is initially enrolling in PEMHCA and the child has attained the prescribed age.

This amendment increases the age provision to 26 and cross-references the subdivision with the definition of “disabled” in section 599.500, subdivision (p). In addition, the amendment clarifies that an employee or annuitant has 60 days from initial enrollment to provide evidence of their child’s disability, making it consistent with requirements for disabled

children who are continuing coverage under section 599.501, subdivision (g).

8) Proposed amendments to section 599.501, subdivision (g):

Existing CCR section 599.501, subdivision (g) provides continued coverage for a disabled child upon attainment of age 23, so long as evidence of disability is filed with the Board 60 days before or after the disabled child reaches age 23. This amendment increases the age provision to 26 and cross-references the subdivision with the definition of “disabled” in section 599.500, subdivision (p).

9) Section 599.501, subdivisions (h) through (i):

The CCR section 599.501, subdivisions (h) through (i) remain unchanged.

Necessity

The Board seeks to amend the above subdivisions in the CCR sections 599.500 and 599.501 to provide authority to CalPERS to enforce the new age limits proscribed by the Act and therefore be compliant with federal law and regulations.

Technical, Theoretical and/or Empirical Studies, Reports or Documents:

None.

Alternatives to the Regulatory Action and CalPERS Reasons for Rejecting those Alternatives:

Adoption of the proposed regulations mandate that the federal health care reform law, the Act, and pending amendments to GC section 22775 conform State law to federal law. As a result, no other alternatives were presented to, or considered by, the Board.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses:

The proposed regulatory actions have no cost impact on either small businesses or on persons in the private sector.